

## ATTACHMENT 1

### GROUPME INC.'S COMPANY OVERVIEW



# GROUPME

## COMPANY OVERVIEW

July 2012



# THE AGE OF MOBILE

By the end of 2011, *50% of Americans* owned a smartphone

Globally, *3x* more smartphones are being activated *every minute* than babies being born

*6.9 trillion* SMS messages were sent in 2010  
(*8 trillion* estimate for 2011)

In Q4 2010, more smartphones were sold *than PCs*



*conversations with people that  
are actually important to you.*

# “YOUR REAL LIFE NETWORK”

*ubiquitous, always on, and works  
everywhere, with everyone.*



# WHAT IS GROUPME?

PRIVATE & FREE GROUP MESSAGING FOR ANYONE ON EVERY PHONE



iPhone



Android



Windows Phone 7



BlackBerry



SMS



Website

*works on every phone, via SMS or data*

**500,000,000+**

*messages sent monthly...and growing*

**30+**

*marquee brand partnerships*

**80+**

*countries supported*



*app store rating*



*independent team with big company support*



2012 © GroupMe.

# HOW DO PEOPLE USE GROUPME?



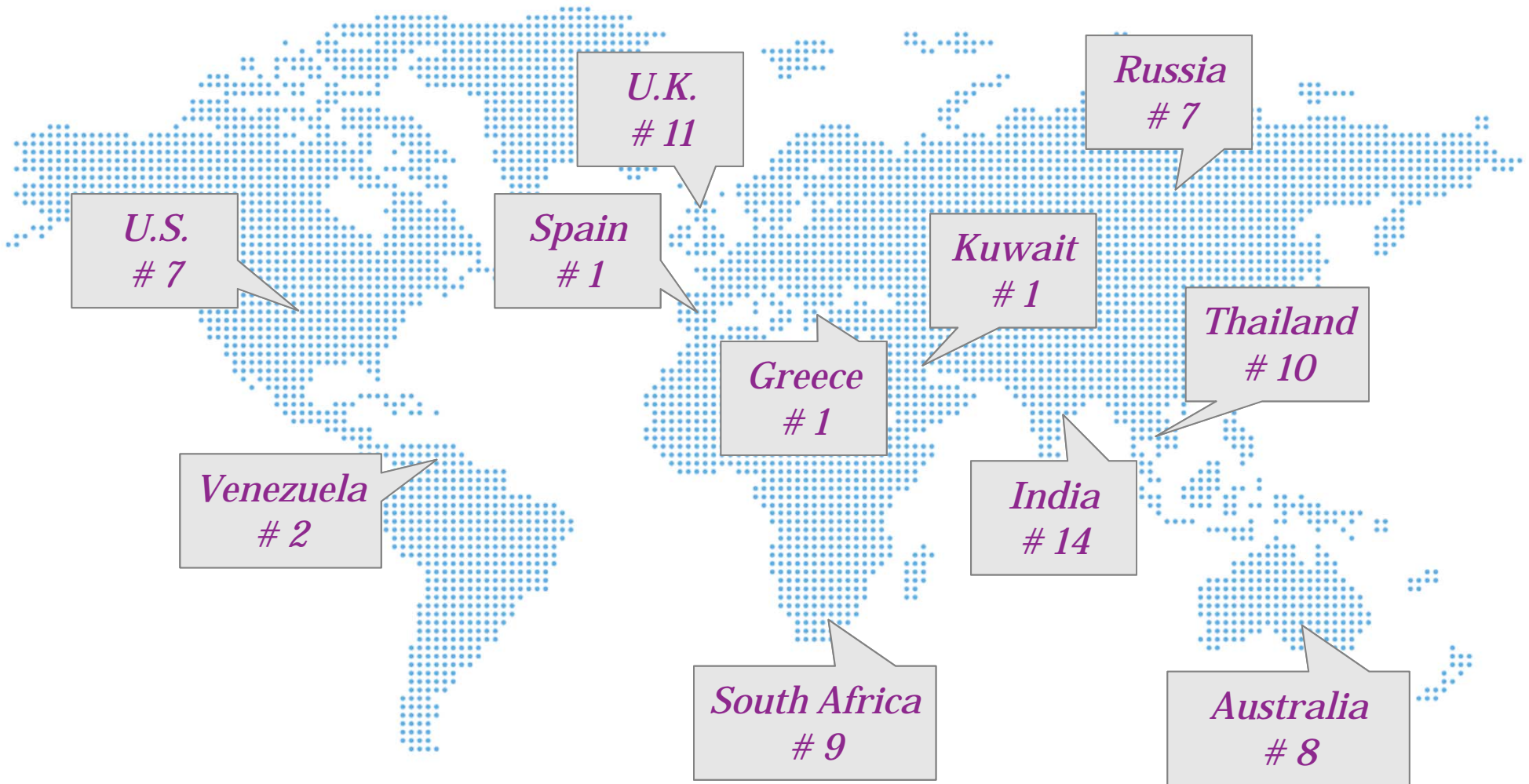
# WHAT MAKES GROUPME DIFFERENT?

- ✓ **FOCUS ON THE GROUP:** Not a single-player or 1-to-1 user experience, but rather designed for small, private group interactions
- ✓ **MOBILE FIRST:** Built to work for all users across all mobile phones, with web connectivity second
- ✓ **TRUE SOCIAL GRAPH:** GroupMe groups embody and encapsulate users' actual real-world relationships
- ✓ **INTEROPERABILITY:** Goal to be always available for all users, regardless of device type, location, or other factor



# GLOBAL POPULARITY

RANK AMONGST iOS SOCIAL NETWORKING APPS\*



Notes: 1) Data represents highest rank achieved; 2) Android Market Rank: #5 (country-specific data unavailable)



2012 © GroupMe.



# GROUPME + BRANDS / EVENTS

OUR BRAND PRODUCTS CAN BE USED INDEPENDENTLY OR TOGETHER

## 1 Featured Groups

Branded group chats that function exactly as regular GroupMe groups for end users (private & device/platform agnostic).

Brand admins are given a range of tools (broadcast messaging, location targeting, etc.) to engage with groups.

## 2 Client Library

API to enable full GroupMe functionality within your apps. Minimal development time required.

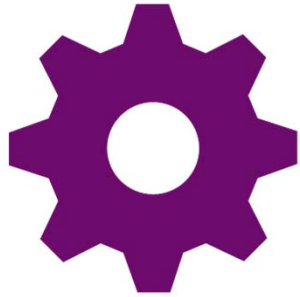
Groups created within app can be tied to Featured Group.

## 3 Experiences by GroupMe

Recently launched commerce product helping users discover, plan, and pay for group experiences.



# COMPETITIVE DIFFERENTIATION



## TECHNOLOGY

Interoperability across platforms & SMS/data

Beautiful UI & enjoyable UX

Faster product release cycles

Skype feature integration

*universal + global*



## SCALE

Infinite real-life use cases

International support in 90+ countries

Skype's full support  
(200 million monthly active users)

*indispensable + multi-purpose*



# USER TESTIMONIALS

“I tried to get everyone on board with Twitter, but most had no desire to sign up. However, **everyone did have texting & a cell phone**. Setting up GroupMe took just seconds.

“I use it to talk with my other Bon Jovi friends **before, during & after concerts**.”

“Since March, we’ve been able to stop a home invasion, interrupt a car theft in progress and snap a clear photograph of a vagrant...all due to our ability to amass a large number of persons very quickly to the scene of the action...GroupMe has **provided a sense of empowerment in our community**.”

“Fun way to **stay connected with a group of friends** leading up to an event like a night out on the town.”

“My family is spread out from Oklahoma, Arkansas & Tennessee...GroupMe has **made it SO much easier** to keep them updated even on the small things...our **ages range from 13 to 60** and it’s made it so nice and kept us close.”

“I own a small biz and I use it to **communicate with managers and to host conference calls**...probably the coolest app on my phone.”

“I’ve found GroupMe to be the best artist services tool I’ve ever used...but the best part is that GroupMe allows us to **always feel personally, not just professionally, connected**.”

“I use GroupMe **for ladies Bible study and my two close friends**. What I love about GroupMe is that it’s just like talking to everyone but texting style.”

“I run a homicide team for a large sheriff’s department and **use GroupMe with my investigative team**. We pass on information as it is obtained...to keep other investigators up to date with developing information.”

“We use several different groups within our family for different purposes...using GroupMe **simplifies the process of communicating**.”





# THANK YOU

**FOR MORE INFORMATION, PLEASE CONTACT**

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ATTACHMENT 2

FIRST AMENDED CLASS ACTION COMPLAINT  
AND ORDER GRANTING MOTIONS TO STAY

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*Attorneys for the Plaintiff and the Putative Classes*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

BRIAN GLAUSER, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

TWILIO, INC., a Delaware corporation,  
GROUPME, INC., a Delaware corporation,

Defendants.

Case No. 4:11-cv-02584-PJH

[Honorable Phyllis J. Hamilton]

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

**Class Action**

**JURY TRIAL DEMANDED**

**FIRST AMENDED CLASS ACTION COMPLAINT**

1. Plaintiff Brian Glauser (“Plaintiff” or “Glauser”) brings this first amended class action complaint against Defendants Twilio, Inc. and GroupMe, Inc. to stop Defendants’ practice of making unsolicited text message calls to cellular telephones, and to obtain redress for all persons injured by their conduct. Plaintiff, for his first amended class action complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

**PARTIES**

2. Plaintiff Brian Glauser is a natural person domiciled in the State of Virginia.

3. Defendant Twilio, Inc. is a corporation incorporated and existing under the laws of the State of Delaware with its principal place of business located at 548 Market St #14510, San Francisco, California 94104. Twilio does business throughout the United States, including in the State of California and this District.

4. Defendant GroupMe, Inc. is a corporation incorporated and existing under the laws of the state of Delaware with its principal place of business located at 26 W 17th St New York, New York 10011. GroupMe does business throughout the United States, including in the State of California and this District.

**JURISDICTION AND VENUE**

5. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 (d), because (a) at least one member of the putative class is a citizen of a state different from Defendants, (b) the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and (c) none of the exceptions under that subsection apply to this action.

6. Venue is proper in this district under 28 U.S.C. § 1391 (a)(1-2) as Defendant Twilio resides in this District, and additionally proper because both Defendants transact business in this District, including soliciting consumers and entering into contracts with vendors.

**COMMON ALLEGATIONS OF FACT**

**A. Bulk SMS Marketing**

7. In recent years, marketers who have felt stymied by federal laws limiting solicitation by telephone, fax machine, and e-mail have increasingly looked to alternative technologies through which to send bulk messages cheaply.

8. Bulk text messaging, or SMS marketing, has emerged as a new and direct method of communicating and soliciting consumer business. The term “Short Message Service” or “SMS” is a messaging system that allows cellular telephone subscribers to use their cellular telephones to send and receive short text messages, usually limited to 160 characters. An SMS message is a text message call directed to a wireless device through the use of the telephone number assigned to the device.

9. When an SMS message call is successfully made, the recipient’s cell phone rings, alerting him or her that a call is being received. As cellular telephones are inherently mobile and are frequently carried on their owner’s person, calls to cellular telephones, including SMS messages, may be received by the called party virtually anywhere worldwide.

**B. Defendants Make Text Message Calls to Consumers Who Do Not Want Them**

10. The newest evolution of text message marketing has taken the form of “group messaging” applications, such as Defendant GroupMe’s service, in which a single person or entity is able to create a “group,” and then request that Defendants transmit text message calls to dozens of people at once. Likewise, a group texting service allows all the recipients to respond to all other members of the group with a single message.

11. GroupMe introduced its service through its website, GroupMe.com, in or around August 2010. GroupMe is marketed as a “group texting” tool, allowing customers to request that GroupMe simultaneously transmit SMS text messages to large groups of people *en masse*, using one common cellular telephone number provided exclusively by Defendant Twilio.

12. To use the GroupMe service, a customer signs up by providing basic



1 information through the GroupMe website or mobile application, creates a “group” of up to  
2 twenty-four individuals, and provides the full names and cellular telephone numbers of each  
3 group member to Defendant GroupMe.

4 13. Group members are not aware that they have been added to a GroupMe  
5 texting group before they receive a text message from Defendants. Defendants do not seek to  
6 obtain consent of consumers that are added to a GroupMe texting group. Instead, GroupMe  
7 merely requires the group creator to represent that they have the consent of the individuals  
8 they intend to add to a group, which almost never happens.

9 14. A consumer’s participation in the group is opt-out, meaning that a consumer  
10 may be added to and kept in the group without authorization. Often times, however, a  
11 consumer who has been added to a group will continue to receive unauthorized text message  
12 calls even after they have attempted to opt out of a group.

13 15. Once all group members receive a message, they too can respond to everyone  
14 else in the group an unlimited number of times, creating an ongoing “chat room” effect of  
15 nearly constant text message calls. Because the messages come from an unknown number,  
16 and the group creator can easily input a fake name, the resulting chat room can be a chaotic  
17 storm of text messages in which people are both attempting to figure out what the group is,  
18 who the creator is, how they were made a part of the group, and how to stop it.

19 16. If a group member does not respond, he or she will eventually be removed  
20 from the group; however, GroupMe’s removal does not occur until a group member has  
21 received anywhere from fifteen to thirty messages, including at least four messages directly  
22 from GroupMe.

23 17. Defendant Twilio plays an essential role in the delivery, receipt and general  
24 transmission of each text message call from GroupMe. Without the technology, service, and  
25 expertise provided by Twilio, GroupMe would be unable to make the text message calls at  
26 issue in this case.

27 18. In particular, Twilio provides the application program interface, phone  
28

1 numbers, and equipment that transmits all text messages from GroupMe. As described by  
2 Twilio on its website, its “communications platform” allows SMS applications like GroupMe  
3 to transmit text messages with little effort and in complete reliance on Twilio’s equipment  
4 and technology. In consideration of its services, Twilio monetarily benefits from each text  
5 message sent by GroupMe.

6 19. Unlike common carriers, who have a general obligation to make their services  
7 available to the public without regard to the content of material that travels over their  
8 network, Twilio selectively enters into private contracts with third parties like GroupMe to  
9 transmit SMS text messages. Twilio solicits creators of SMS texting applications to utilize  
10 its communications platform, and is likewise able to refuse to transmit content in its sole  
11 discretion.

12 20. Twilio’s technology is specifically designed to transmit mass numbers of text  
13 messages from a single phone number or SMS short code. Indeed, Twilio markets its ability  
14 to send bulk text message advertisements on behalf of third parties, stating on its website that  
15 its service is “Great for applications that need to send marketing SMS messages” in “large  
16 volumes.”

17 21. Once a user creates a GroupMe texting group, Twilio maintains lists and/or  
18 databases of the recipient’s cell phone numbers that they use to direct GroupMe text  
19 messages to those individuals. Twilio is aware that members of GroupMe texting groups  
20 have no prior relationship with Twilio or GroupMe.

21 22. Twilio is able to monitor the nature and content of text messages that it  
22 transmits to cell phone numbers, including text message calls initiated by GroupMe. As a  
23 result, Twilio has knowledge of the content of the text message calls that it transmits to  
24 members of GroupMe texting groups, including text message calls advertising the GroupMe  
25 service and mobile application.

26 23. Despite its knowledge of the nature and content of text message calls from  
27 GroupMe, Twilio has taken no steps to prevent the transmission of unsolicited text messages  
28

1 from GroupMe.

2 24. Accordingly, Twilio maintains a high degree of involvement in transmitting  
3 each text message call from GroupMe. Moreover, Twilio has actual notice of the content of  
4 the text message calls that it transmits from GroupMe, including text message calls  
5 advertising GroupMe's service and mobile application.

6 25. As a result of Defendants' software and application design, thousands of  
7 consumers receive text message calls from and through Defendant GroupMe's service that  
8 they neither consented to nor wanted.

9 **C. Defendants Harvest the Phone Numbers Submitted by Group Creators**  
10 **to Promote the GroupMe Service Through Text Spam**

11 26. Because Defendants have access to the phone numbers of individuals who are  
12 involuntarily added to texting groups and control the flow of messages, Defendants are able  
13 to transmit wireless spam for their own individual benefit to the thousands of phone numbers  
14 added by consumers who are creating GroupMe texting groups.

15 27. In conjunction with Defendant Twilio, Defendant GroupMe harvests all phone  
16 numbers added by group creators in order to independently transmit its own text message  
17 advertisements promoting its service and mobile application.

18 28. The moment a consumer creates a GroupMe texting group, but before the  
19 group creator actually tries to have GroupMe text anyone in the new group, every member of  
20 the group instantly receives two text message calls directly from GroupMe using a telephone  
21 number and equipment provided by Twilio. GroupMe causes and Twilio transmits these text  
22 message calls to consumers.

23 29. These text message calls include generic advertisements of GroupMe's  
24 service and mobile application (the "GroupMe Mobile App Text"). The GroupMe Mobile  
25 App Text contains a direct link to download the GroupMe mobile application.

26 30. The GroupMe Mobile App Text is sent directly by Defendants to every group  
27 member, and its transmission is exclusively under the control of Defendants.

**D. Plaintiff's Experience with Defendants**

31. On or about April 23, 2011, Plaintiff's cell phone rang, indicating that a text call was being received.

32. The "from" field of such transmission was identified cryptically as 804-742-4986. The phone number 804-742-4986 is a dedicated telephone number owned and/or operated by Defendant Twilio, and provided by Twilio to Defendant GroupMe, which then transmits text messages *en masse* through devices known as modem banks and/or carrier gateways.

33. The body of the first text message read:

Hi Brian Glauser, it's [group creator].

Welcome to GroupMe!

I just added you to "Poker" w/ [group member],

[group member], [group member], [group member],

[group member], [group member] & 3 more.

Text back to join the conversation.

34. This text message call was made directly by Defendants and not initiated or consented to by Plaintiff or the group creator.

35. Almost immediately after receiving the text message call alleged above, Plaintiff then received a second message, the GroupMe Mobile App Text, which read:

GroupMe is a group texting service.

Standard SMS rates may apply.

Get the app at <http://groupme.com/a> to chat for free.

Reply #exit to quit or #help for more.

36. This text message call was made directly by Defendants for their own benefit and not initiated or consented to by Plaintiff or the group creator.

37. Following these two text message calls, Plaintiff received a flurry of 7 other text message calls from GroupMe at the request of the other group members, during and after

1 which Plaintiff did not reply or otherwise interact with the texting group.

2 38. Eventually, Plaintiff received the following message directly from GroupMe:

3 Hey, are you there?

4 GroupMe is more fun when you participate.

5 We'll remove you soon unless you reply  
6 to the group or text #stay. Reply #exit to leave.

7 39. Thereafter, Plaintiff again did not reply or otherwise interact with the texting  
8 group. Plaintiff received at least five more messages from the group, until finally receiving a  
9 message from GroupMe stating:

10 We haven't heard from you, so we removed you  
11 from this group to be on the safe side.

12 Don't worry though. You can always get back in  
13 by replying to this text.

14 40. At no time did Plaintiff consent to the receipt of the text message calls alleged  
15 above or any other such wireless spam text messages transmitted by or through Defendants.  
16 Plaintiff did not consent to or request to be made a part of the GroupMe group "Poker."  
17 Plaintiff had no reason to be in contact with Defendants and did not provide his cell phone  
18 number to GroupMe or Twilio.

19 41. Accordingly, Plaintiff was added to a group texting service, received fifteen  
20 text message calls, and eventually was removed from the group, entirely without his input or  
21 consent.

22 42. By effectuating these unauthorized text message calls, Defendants have  
23 caused Plaintiff and members of the Classes actual harm. In the present case, because of the  
24 nature of GroupMe's service, a consumer could be subjected to hundreds of text messages  
25 before having an opportunity to opt out and sometimes even after they have attempted to opt  
26 out.

27 43. In order to redress these injuries, Plaintiff, on behalf of himself and a  
28

1 nationwide class of similarly situated individuals, brings suit under the Telephone Consumer  
 2 Protection Act, 47 U.S.C. § 227, *et seq.* (“47 U.S.C. § 227”), which prohibits unsolicited  
 3 voice and text calls to cell phones.

4 44. On behalf of two Classes, Plaintiff seeks an injunction requiring Defendants to  
 5 cease all wireless spam activities and an award of statutory damages to the members of the  
 6 Classes, together with costs and reasonable attorneys’ fees.

### 7 **CLASS ACTION ALLEGATIONS**

8 45. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure  
 9 23(b)(2) and Rule 23(b)(3) on behalf of himself and two Classes defined as follows:

#### 10 **The Automatic Opt-Out Class**

11 All persons who received one or more text messages from GroupMe who were  
 12 automatically unsubscribed from a GroupMe group because they never opted-in.

#### 13 **The GroupMe Mobile App Text Class**

14 All persons who received the GroupMe Mobile App Text, or a substantially  
 15 similar text message call from GroupMe, that advertised GroupMe’s mobile  
 16 application.

17 46. The following individuals are excluded from the Classes: (1) any Judge or  
 18 Magistrate presiding over this action and members of their families; (2) Defendants,  
 19 Defendants’ subsidiaries, parents, successors, predecessors, and any entity in which  
 20 Defendants or their parents have a controlling interest and their current or former employees,  
 21 officers and directors; (3) Plaintiffs’ attorneys, (4) persons who properly execute and file a  
 22 timely request for exclusion from the class; (5) the legal representatives, successors or  
 23 assigns of any such excluded persons; and (6) persons whose claims against Defendants have  
 24 been fully and finally adjudicated and/or released.

25 47. There are thousands of members of the Classes such that joinder of all  
 26 members is impracticable.

27 48. Plaintiff’s claims are typical of the claims of all of the other members of the  
 28

1 Classes. Plaintiff and each member of the Classes were affected in substantially the same  
2 way by Defendants' unlawful conduct of transmitting wireless spam.

3 49. Plaintiff will fairly and adequately represent and protect the interests of the  
4 other members of the Classes. Plaintiff has retained counsel with substantial experience in  
5 prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to  
6 vigorously prosecuting this action on behalf of the members of the Classes, and have the  
7 financial resources to do so. Neither Plaintiff nor his counsel have any interest adverse to  
8 those of the other members of the Classes.

9 50. Absent a class action, most members of the Classes would find the cost of  
10 litigating their claims to be prohibitive, and will have no effective remedy. The class  
11 treatment of common questions of law and fact is also superior to multiple individual actions  
12 or piecemeal litigation in that it conserves the resources of the courts and the litigants, and  
13 promotes consistency and efficiency of adjudication.

14 51. Defendants have acted and failed to act on grounds generally applicable to the  
15 Plaintiff and the other members of the Classes in transmitting the wireless spam at issue,  
16 requiring the Court's imposition of uniform relief to ensure compatible standards of conduct  
17 toward the members of the Classes.

18 52. The factual and legal bases of Defendants' liability to Plaintiff and to the other  
19 members of the Classes are the same, resulting in injury to the Plaintiff and to all of the other  
20 members of the Classes as a result of the transmission of the wireless spam alleged herein.  
21 Plaintiff and the other members of the Classes have all suffered harm and damages as a result  
22 of Defendants' unlawful and wrongful conduct of transmitting wireless spam.

23 53. There are many questions of law and fact common to the claims of Plaintiff  
24 and the other members of the Classes, and those questions predominate over any questions  
25 that may affect individual members of the Classes. Common questions for the Classes  
26 include but are not limited to the following:  
27  
28

(a) Does the wireless spam transmitted by Defendants violate 47 U.S.C. § 227?

(b) Are members of the Classes entitled to treble damages based on the willfulness of Defendants' conduct?

**FIRST CAUSE OF ACTION  
(Violation of 47 U.S.C. § 227)  
(On Behalf of Plaintiff and both Classes)**

54. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

55. Defendants made unsolicited text calls, including the text message calls referenced in paragraphs 31 through 42, to the wireless telephone numbers of all members of the Classes. Each such text message call was made using equipment and software maintained, operated, and/or provided in part by Defendant Twilio, that, upon information and belief, had the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

56. These text calls were made *en masse* and without the prior express consent of the Plaintiff and the other members of the Classes to receive such wireless spam. The text message calls included advertisements about GroupMe's service and mobile application that were written in an impersonal and generic manner and came from a phone number assigned solely to transmit such text message calls.

57. As detailed herein, Defendant Twilio played an essential role in the delivery of each text message call from Defendant GroupMe. Twilio had knowledge of the nature and content of text message calls from GroupMe and took no steps to prevent the transmission of the unsolicited text message calls.

58. Defendants have, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendants' conduct, the members of the Classes are each entitled to, under section 227(b)(3)(B), a minimum of \$500.00 in damages for each violation of such act.

59. Because Defendants had knowledge that Plaintiff and other members of the



Classes did not consent to the receipt of the aforementioned wireless spam, the Court should, pursuant to section 47 U.S.C. § 227(b)(3)(C), treble the amount of statutory damages recoverable by the Plaintiff and the other members of the Classes.

WHEREFORE, Plaintiff Brian Glauser, on behalf of himself and the Classes, prays for the following relief:

1. An order certifying this case as a class action on behalf of the Classes as defined above; appointing Plaintiff Glauser as the representative of the Classes; and appointing his counsel as class counsel;
2. An award of actual and statutory damages;
3. An injunction requiring Defendants to cease all wireless spam activities, and otherwise protecting the interest of the Classes;
4. An award of reasonable attorneys' fees and costs; and
5. Such further and other relief the Court deems reasonable and just.

### JURY DEMAND

Plaintiff requests trial by jury of all claims that can be so tried.

Dated: September 15, 2011

Respectfully submitted,

BRIAN GLAUSER, individually and on behalf  
of all others similarly situated,

By: /s/ Sean P. Reis  
Sean P. Reis  
EDELSON MCGUIRE LLP  
One of the Attorneys for Plaintiff

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7  
8 *Attorneys for the Plaintiff* BRIAN GLAUSER  
and the Putative Classes

**CERTIFICATE OF SERVICE**

I, Sean P. Reis, an attorney, certify that on September 15, 2011, I served the above and foregoing ***First Amended Class Action Complaint***, by causing a true and accurate copy of such paper to be filed with the Court and transmitted to all counsel of record via the CM/ECF electronic filing system.

By: /s/ Sean P. Reis  
Sean P. Reis  
EDELSON MCGUIRE LLP

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BRIAN GLAUSER, individually and on  
behalf of all other similarly situated,

Plaintiff,

No. C 11-2584 PJH

v.

**ORDER GRANTING MOTIONS  
TO STAY**

TWILIO, INC., et al.,

Defendants.

Defendants' motions to dismiss the complaint and in the alternative, to stay or transfer the action, came on for hearing before this court on January 25, 2012. Plaintiff Brian Glauser ("plaintiff") appeared through his counsel, Rafey Balabanian. Defendant Twilio, Inc. ("Twilio") appeared through its counsel, Patrick Thompson and Audrey Lin, and defendant GroupMe, Inc. ("GroupMe")(collectively "defendants"), appeared through its counsel, Bryan Merryman. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS defendants' request for a stay pending resolution of certain disputes before the Federal Communications Commission ("FCC"), for the reasons indicated at the hearing, and summarized as follows.

Defendants each challenge plaintiff's complaint on primary jurisdiction grounds, arguing that the FCC has undertaken consideration of the very issues raised by plaintiff's complaint, and that the court should defer any ruling on the issues until such time as the FCC has exercised its expertise in deciding the issues first. The primary jurisdiction doctrine "is a prudential doctrine under which courts may, under appropriate circumstances,

determine that the initial decision-making responsibility should be performed by the relevant agency rather than the courts.” See Davel Commc’ns, Inc. v. Qwest Corp., 460 F.3d 1075, 1080, 1086 (9th Cir. 2006) (doctrine applies to claims properly cognizable in court that contain some issue within the special competence of an administrative agency); see also Syntek Semiconductor Co., Ltd. v. Microchip Tech., Inc., 307 F.3d 775, 780 (9th Cir. 2002). The doctrine is applicable whenever the enforcement of a claim subject to a specific regulatory scheme requires resolution of issues that are within the special competence of an administrative body. See Davel Commc’ns, 460 F.3d at 1086. The doctrine is furthermore appropriate where conduct is alleged which is “at least arguably protected or prohibited by a regulatory statute,” and agency resolution of an issue “is likely to be a material aid to any judicial resolution.” See, e.g., GTE.Net LLC v. Cox Commc’ns, Inc., 185 F. Supp. 2d 1141, 1144 (S.D. Cal. 2002)(granting motion to stay on primary jurisdiction grounds).

While no fixed formula exists for applying the doctrine, the Ninth Circuit traditionally looks to four factors that must be satisfied for the doctrine to apply: (1) the need to resolve an issue that; (2) has been placed by Congress within the jurisdiction of an administrative body having regulatory authority; (3) pursuant to a statute that subjects an industry or activity to a comprehensive regulatory scheme that; (4) requires expertise or uniformity in administration. See Davel, 460 F.3d at 1087; United States v. Gen. Dynamics Corp., 828 F.2d 1356, 1362 (9th Cir. 1987); see also Clark v. Time Warner Cable, 523 F.3d 1110, 1115-16 (9th Cir. 2008)(affirming referral to FCC on issues regarding FCC regulation of emerging VoIP technology)(“[w] have previously approved of the use of the primary jurisdiction doctrine where it is unclear whether a federal statute applies to a new technology”).

On balance, these factors are satisfied here. Plaintiff has alleged that defendant GroupMe, who provides a group texting application, and defendant Twilio, who provides the software program to transmit text messages from GroupMe, have each violated the

Telephone Consumer Protection Act of 1991 (“TCPA”), 47 U.S.C. § 227 et seq., which prohibits the making of any call without the prior express consent of the called party, using an automatic telephone dialing system, to any telephone number assigned to a cellular telephone service. See, e.g., Amended Complaint, ¶¶ 10-11, 17-18, 23, 25-26, 4255-58; see Satterfield v. Simon & Schuster, Inc., 569 F.3d 946, 950 (9th Cir. 2009)(setting forth elements of claim under TCPA). Specifically, plaintiff alleges that defendants, through their text messaging applications, tools, and/or technology, made unsolicited text calls to plaintiff and others similarly situated, without their prior expressed consent, using an automatic telephone dialing system. Amended Complaint, ¶¶ 55-57.

In its motion to dismiss, however, GroupMe contends that plaintiff’s allegations fail to qualify GroupMe as an auto-dialer for whom liability can be assessed under the TCPA, and furthermore, that the allegations also adequately establish that GroupMe obtained prior express consent for the sending of any group text messages. Defendant Twilio, in its corresponding motion to dismiss, asserts that it is exempt from liability under the TCPA in its alleged role of software provider, since its functional role is that of a ‘common carrier.’

The resolution of all three of these issues – who qualifies as an auto-dialer subject to the TCPA; requirements for obtaining valid prior express consent under the TCPA; and the applicability of any ‘common carrier’ exemption to a text message service provider under the TCP – are, generally speaking, matters that are within the jurisdiction of the FCC. See In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 18 F.C.C.R. 14014, 14115 (July 3, 2003); Rules and Regulations Implementing the TCPA of 1991, 68 F.R. 44144-01, 44165 (July 25, 2003); see also Charvat v. EchoStar Satellite, LLC, 630 F.3d 459, 466-67 (6th Cir. 2010)(“Congress vested the FCC with considerable authority to implement the TCPA” and to “prescribe regulations to implement the legislation”).

More significantly, however, the FCC’s input with respect to these issues is currently being sought. The FCC’s January 22, 2010 Notice of Proposed Rulemaking, for example,

1 notes that the TCPA is silent with respect to the form that “prior express consent” must take  
2 under the TCPA, and accordingly seeks public comment as to the manner of prior express  
3 consent it should require vis-a-vis the auto-dialing of cellular services governed by the  
4 TCPA. See GroupMe Request for Judicial Notice, Ex. L, ¶ 2, 17, 20 (2010 Notice of  
5 Proposed Rulemaking). As defendant GroupMe notes, many of the comments thus far  
6 received in response to the FCC’s Notice of Proposed Rulemaking have specifically  
7 requested that the FCC also define auto-dialer under the TCPA to take technological  
8 advances in recent years (such as text messaging) into account. Similarly, the specific  
9 issue whether a text message service provider qualifies as a common carrier exempt from  
10 liability pursuant to the TCPA, is also currently under submission before the FCC. See  
11 Twilio Request for Judicial Notice, Ex. 1 (Club Texting, Inc. Petition for Declaratory Ruling  
12 Before FCC); id., Ex. 2 (FCC Public Notice Seeking Comment on Club Texting Petition).

13 As these issues directly overlap with the legal issues before the court by way of  
14 plaintiff’s complaint and defendants’ motions to dismiss, the court concludes that the FCC  
15 is in the process of utilizing its recognized expertise to consider issues pending before the  
16 court. As such, the prerequisites for application of the primary jurisdiction doctrine are  
17 satisfied, and allowing the FCC to resolve the foregoing issues prior to adjudicating the  
18 issues in the present action, in order to obtain the benefit of the FCC’s guidance, is  
19 appropriate. See Davel Commc’ns, 460 F.3d at 1087. While the court is sensitive to  
20 plaintiffs’ concerns that allowing the FCC to rule upon the issues before the court will  
21 engender unfair delay for plaintiffs, the court also notes that counsel for both sides  
22 acknowledged that the Proposed Notice of Rulemaking and Club Texting Petition have  
23 already been pending before the FCC for a significant amount of time, suggesting that the  
24 likely wait for FCC guidance as to both will be shorter than average. In these  
25 circumstances, and furthermore in view of the early stage of the present action, the court  
26 finds that the benefit to be provided by FCC guidance on potentially dispositive issues in  
27 this litigation outweighs the benefit to plaintiff in allowing the action to proceed. As a result,  
28


1 the court accordingly GRANTS defendants' request to STAY the current action, pending  
2 the FCC's resolution of related issues.

3 In view of the foregoing, the court declines to reach the merits of defendants'  
4 remaining arguments with respect to failure to state a claim pursuant to the TCPA.  
5 The parties' requests for judicial notice, however, are GRANTED.

6 The case management conference currently scheduled for March 1, 2012 is hereby  
7 VACATED (notwithstanding the notation reflected in the minute order). The parties shall  
8 file a joint status statement every six months, triggered from the date of this order, to advise  
9 the court as to the status of the two matters currently before the FCC, or sooner, should the  
10 FCC resolve either or both issues prior to the expiration of the six month period.

11 **IT IS SO ORDERED.**

12 Dated: January 27, 2012

  
\_\_\_\_\_  
PHYLLIS J. HAMILTON  
United States District Judge



## ATTACHMENT 3

### GROUPME INC.'S TERMS OF SERVICE

for iPhone

for Android

for BlackBerry

for WP7

for SMS

About

Blog

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## Terms of Service

### INTRODUCTION

GroupMe, Inc. allows GroupMe members to purchase and invite other members of their group to purchase "Vouchers," as defined herein, that are redeemable for goods, services or events ("Experiences") offered by third party merchants ("Merchants"). We appreciate responsible usage of the service and hope you enjoy it! By the way, if you don't agree to the Terms of Service below, don't use GroupMe Experiences!

The group member initiating the Experience is the group administrator ("Group Admin") and members of the group authorize an amount to be charged to their credit card to participate in the Experience. To place an order to participate in an Experience, you must provide valid and accurate credit card details to GroupMe. When you place your order, GroupMe will authorize your credit card for the amount of the Experience purchase price that you contribute. A voucher will be issued for redemption in connection with the applicable Experience that can only be redeemed with the relevant Merchant offering the Experience ("Voucher"). GroupMe will only charge your credit card and generate a Voucher for the Experience when it has received orders from all of the group members for the total value of the Experience purchase price. The charge on your credit card will be from GroupMe, Inc. However, GroupMe, Inc. is not the Merchant for the Experience. If the total value of the Experience purchase price is not satisfied, GroupMe will not generate Vouchers and the Experience will not be available to the group. Each Voucher merely groups the individual participations of group members in the Experience for the convenience of the Group Admin. Your participation remains your own individual property in the amount you contributed to the overall Experience, as reflected in our refund policy (see below under "Refunds"). Experiences are currently only available to residents of the United States.

The following Terms govern use of the GroupMe Experience including, without limitation, this website ([www.experiences.groupme.com](http://www.experiences.groupme.com)) (the "Site") and the purchase of Vouchers (collectively the "Service"). The Service is offered subject to your acceptance without modification of all of the Terms, including without limitation the provisions calling for arbitration of disputes that may arise out of use of the Service, and all other operating rules, and policies including, without limitation, GroupMe's Privacy Policy (<http://groupme.com/privacy>) and procedures that may be published from time to time on this website by GroupMe and the GroupMe terms (<http://groupme.com/terms>) (collectively, the "Terms"). If you are a Merchant for GroupMe Experiences, you are bound by the GroupMe Experiences Merchant Terms and Conditions and other related agreements thereunder, including Deal Forms, Vouchers, and Offers, as those terms are defined by the GroupMe Experiences Merchant Terms and Conditions.

### 1. AGREEMENT TO BE BOUND

Please read the Terms carefully before accessing or using the Service. By accessing or using any part of the Service, you agree to be bound by the Terms. If you do not agree to the Terms, then you may not access or use the Service. GroupMe may amend the Terms from time to time and will provide notice of any substantive changes on the Site and, if we have an email address for you, we will send you an email advising of any material changes to the Terms. Continued usage of the Service constitutes acceptance of the amended Terms.

### 2. ABILITY TO ENTER INTO THIS AGREEMENT

The Service is available only to individuals who are the age of majority in their resident jurisdiction. In addition, anyone purchasing a GroupMe Experience that may be redeemed for alcoholic beverages, to the extent there are any such offerings, must be at least 21 years of age at the time that he or she redeems such Vouchers. Further, anyone purchasing a GroupMe Experience for a club, show or similar offerings may also be required to be 21 years of age at the time he or she redeems such Vouchers. Please review the terms of the GroupMe offering and any terms included with the relevant Vouchers for additional information pertaining to the specific GroupMe Experience.

### 3. GROUPME MESSAGES AND CONSENT

Consent to add group members. GroupMe makes it easy for you to add group members to your groups so that you can exchange messages with each other. YOU REPRESENT AND WARRANT TO US THAT EACH PERSON YOU ADD TO A GROUP HAS CONSENTED TO BE ADDED TO THE GROUP AND TO RECEIVE TEXT MESSAGES FROM YOU AND ANYONE ELSE IN THE GROUP.

Consent to receive periodic messages from GroupMe. As part of the Service, GroupMe sometimes causes administrative messages to be sent to members of the group. For example, upon adding a new member to a group, such new member will receive a welcome message, instructions on how to stop receiving messages, and information on how to avoid certain charges by downloading the GroupMe app. GroupMe also may inform group members who have not replied that they automatically will be removed from the group if they do not participate. GroupMe will notify group members when another group member has chosen to participate in a GroupMe Experience. GroupMe may send other administrative messages as well. BY SIGNING UP FOR THE SERVICE, YOU AGREE TO RECEIVE TEXT MESSAGES FROM GROUPME, AND YOU REPRESENT AND WARRANT THAT EACH PERSON YOU ADD TO A GROUP HAS CONSENTED TO RECEIVE TEXT MESSAGES FROM GROUPME.

Stopping GroupMe messages. To permanently cease receiving text messages from any group, text STOP to any group or to the GroupMe shortcode (GROUP or 47687). GroupMe service can be resumed by texting RESUME to any group or the shortcode.

### 4. TEXT MESSAGING FEES

GroupMe does not charge a fee to use the Service, but any text messages sent and/or received are subject to standard text messaging rates. Additionally, text messages sent and/or received count towards a monthly quota as any other messages do. Any users, whether sending or receiving text messages with GroupMe, should be aware that standard text messaging rates may apply. Please be aware that texting charges can fluctuate internationally. Text messaging rates can normally be found by asking your provider. If you are using GroupMe internationally, please read our International SMS terms, available online here: [HYPERLINK "http://groupme.com/t"](http://groupme.com/t)<http://groupme.com/t>

### 5. GROUPME IS A MARKETING AGENT

GroupMe is only acting as the Merchant's marketing agent and facilitates the sale of the Voucher to you. GroupMe is not the issuer, holder or seller of any Voucher. GroupMe makes no representations, warranties or guarantees about the Experience provided by the Merchant. When you purchase a Voucher, you acquire the right to print or otherwise access the Voucher that is issued and held by the applicable Merchant and to use that Voucher according to these Terms, as well as any other terms and conditions that are printed on the Voucher.

You hereby agree to release GroupMe and its affiliates, agents, directors, shareholders, representatives, officers and employees from any claim, liability, injury, damage, loss or costs that you suffer, directly or indirectly related to the acts or omissions of the Merchant in connection with an Experience. Unless otherwise stated at the time of purchase, the Voucher price does not include sales, value added or use taxes which may be payable to Merchant upon redemption. In addition, Vouchers may not be used

for alcohol, prior balances, shipping or handling, tips or gratuities or other fees except as expressly provided on the Voucher or as permitted by the Vendor and as permitted by Applicable Law.

By purchasing a participation in an Experience, you agree to these Terms and any specific terms relating to the Experience that are presented to you prior to purchase and included on your Voucher. The specific terms accompanying an Experience and the Terms appearing on the Voucher will take precedence over these Terms in the event of any conflict, but generally all terms should be read together.

#### 6. RESTRICTIONS ON PURCHASE AMOUNTS

You agree that you are not permitted to purchase value in a single Experience in an amount that exceeds \$2,000 and that you may not purchase value in multiple Experiences in single 24 hour period in a total amount that exceeds \$10,000. GroupMe will not honor any purchases that violate these requirements.

Vouchers cannot be exchanged for any cash value. Vouchers can only be redeemed for participation in the Experience purchased except as detailed herein. You are responsible for redeeming your Voucher and for attending the Experience at the specified time where applicable. Where an Experience requires advance booking, booking can only be made by the Group Admin. If you are Group Admin, you are responsible for notifying other group members of the date/time of the Experience. All group members must participate in the Experience at the same time. GroupMe is not responsible for non-attendance at the Experience or for lost or stolen Vouchers. In the event that a Voucher is lost or stolen, you should contact the Merchant for replacement. If the Merchant will not replace a lost or stolen Voucher, contact GroupMe. Charges may apply to replace lost or stolen Vouchers. The duplication or re-sale of Vouchers is prohibited.

#### 7. VOUCHERS ARE ISSUED BY MERCHANTS

Vouchers are issued and held by Merchants and Merchants are solely responsible for the redemption of the Voucher and the fulfillment of the Experience. Merchants, and not GroupMe, are solely responsible for any damages, claims, liabilities, costs, injuries, illnesses or any other liabilities associated with the Experience, including without limitation complying with all applicable laws concerning redemption of the Voucher and any unclaimed property or escheatment liabilities associated with unredeemed or partially redeemed Vouchers.

#### 8. PROMOTIONAL VOUCHERS

Some of the Vouchers we issue are promotional. This means that a promotional Voucher has both a cash value, the price you paid for the Voucher, and a promotional value, the value in excess of the price you paid. The promotional value of a promotional Voucher will be subject to terms and conditions detailed on the promotional Voucher. Failure to use a promotional Voucher in accordance with all of its terms, including, but not limited to its expiration date, will result in the loss of the promotional value of a promotional Voucher. But the cash value of a promotional Voucher, that is, the price you paid for a promotional value, is subject to the terms detailed on the promotional Voucher as well as the terms set out below concerning EXPIRATION DATES and REFUNDS. In the event that you partially redeem a promotional Voucher for a GroupMe Experience and assuming such partial redemption is allowed by the Merchant, the Merchant will apply the cash value of a promotional Voucher to GroupMe experience first until there is no cash value remaining, and then apply the promotional value, if any, remains.

#### 9. EXPIRATION DATES

The expiration date, if any, for a Voucher will be printed on the Voucher. Merchants are solely responsible for ensuring that the expiration date of any Voucher complies with applicable federal, state, local and international law ("Applicable Law") and for honoring the Voucher if it is redeemed before the expiration date and in compliance with any other terms and conditions printed on the Voucher. If a Voucher includes an expiration date that is prohibited by law in the jurisdiction where the Experience is to be provided, then the Voucher shall expire five (5) years from the date the Voucher is issued, unless Applicable Law requires a longer period or permits a shorter period. If the Merchant does not honor the Voucher in accordance with Applicable Law concerning expiration dates, then GroupMe will refund your Voucher as provided below. Notwithstanding the foregoing, certain Vouchers may expire in their entirety INCLUDING THE CASH VALUE OF THE VOUCHER. Examples include Vouchers associated with concerts or other live events, as well as Vouchers not issued in a specified amount (like a Voucher for a golf lesson, spa visit, or a hotel stay, each without identifying a cash value). Such Vouchers will indicate that the underlying funds are subject to expiration.

#### 10. REFUNDS

Once your Voucher has been issued, GroupMe will refund the amount that you paid for the Experience to your credit card in the event that Merchant refuses to redeem your Voucher, or if your Experience is cancelled by the Merchant or the Merchant otherwise fails to provide the Experience to you after you have sought to redeem the Voucher in accordance with these Terms. Please see "Contacting GroupMe" below for information on how to request a refund. Notwithstanding the foregoing, certain Vouchers may expire in their entirety INCLUDING THE CASH VALUE OF THE VOUCHER. Examples include Vouchers associated with concerts or other live events, as well as Vouchers not issued in a specified amount (like a Voucher for a golf lesson, spa visit, or a hotel stay, each without identifying a cash value). Such Vouchers will indicate that the underlying funds are subject to expiration.

#### 11. CONTACTING GROUPME

In the event that a Merchant will not: (i) honor the Voucher; (ii) provide a refund of the underlying funds; or (iii) replace a lost or stolen Voucher, you can contact GroupMe at the following toll free telephone number (866) 489-0058 or the following email address support@groupme.com. In order for GroupMe to process requests in accordance with this section, please provide the following information: (a) the identity of the Voucher and Merchant; (b) details concerning your efforts to secure relief from the Merchant including dates, times, and the Merchant representatives with whom you spoke; and (c) a notarized statement declaring, under the penalty of perjury, that the Voucher has not been redeemed with the Merchant.

#### 12. COPYRIGHT CLAIMS AND DMCA POLICY

We respect the intellectual property of others. If you think material shared in a GroupMe group violates any of your copyrights, please contact GroupMe.

The following steps should be followed when sending a Digital Millennium Copyright Act ("DMCA") take down notice to us.

Send an email to [copyright@groupme.com](mailto:copyright@groupme.com).

Include details of the infringement, including an identification of the copyrighted work(s) claimed to have been infringed, identification of the material that is claimed to be infringing, and information sufficient for us to locate the material.

Include a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.

Include a statement that the above information is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Add your name and address.

We will reply to all such notices, including as required or appropriate by removing any infringing material or eliminating all links to the infringing material. Should a user repeatedly infringe on copyrights or other intellectual property, GroupMe will terminate that user's access to GroupMe.

**13. MODIFICATIONS TO AND TERMINATION OF THE SERVICE**

GroupMe may periodically make updates to the Service. Disruptions to the Service are rare but may occur. GroupMe reserves the right to terminate the Service at its sole discretion. This may prevent you from accessing any Content made available through or on the Service.

**14. PRIVACY POLICY**

Messages transmitted via GroupMe are subject to the GroupMe Privacy Policy, available online at <http://groupme.com/privacy>

**15. TERMINATION OF ACCESS TO CONTENT AND SERVICE**

We reserve the right to block access to any Content and to terminate your or any group member's access to the Service at any time, with or without cause, with or without notice, effective immediately. Should you wish to terminate your use of the GroupMe service, simply text STOP to any existing GroupMe group. Provisions of the Terms which on their face are intended to survive shall survive such termination. Your access to Content may be terminated. You may redeem any Voucher for a GroupMe Experience issued prior to termination in accordance with its terms and these Terms.

**16. DISCLAIMER OF WARRANTIES**

YOUR USE OF THE SOFTWARE AND SERVICE IS AT YOUR SOLE RISK. THE SOFTWARE AND SERVICE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. GROUPME AND ITS AFFILIATES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. GROUPME DOES NOT GUARANTEE THE ACCURACY, COMPLETENESS, OR USEFULNESS OF THE SERVICE, AND YOU RELY ON THE SERVICE AT YOUR OWN RISK. ANY MATERIAL TRANSMITTED OR STORED THROUGH USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE OR LOSS OF DATA THAT RESULTS FROM THE TRANSMISSION OF ANY MATERIAL THROUGH THE SERVICE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM GROUPME OR THROUGH OR FROM THE SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. SOME STATES MAY PROHIBIT A DISCLAIMER OF WARRANTIES AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE. LIMITATION OF LIABILITY

NEITHER GROUPME NOR OUR AFFILIATES, LICENSORS OR SUPPLIERS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF GROUPME HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES), RESULTING FROM YOUR USE OF THE SOFTWARE OR SERVICE. UNDER NO CIRCUMSTANCES WILL GROUPME'S OR OUR AFFILIATES', LICENSORS' OR SUPPLIERS' TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE GREATER OF THE TOTAL AMOUNT PAID BY YOU TO GROUPME FOR THE SOFTWARE OR SERVICE OR \$50. THE LIMITATIONS SET FORTH IN THIS AGREEMENT APPLY EVEN IF ANY LIMITED REMEDY UNDER THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION ON CONSEQUENTIAL OR INCIDENTAL DAMAGES MAY NOT APPLY TO YOU. INDEMNIFICATION

You agree to indemnify and hold harmless GroupMe, its contractors, affiliates and its licensors, and their respective directors, officers, employees and agents from and against any and all claims and expenses, including attorneys' fees, arising out of your use of the Software and/or Service, including but not limited to your violation of the Terms, or your breach of any representation or warranty contained in these Terms.

**17. FORCE MAJEURE**

We will not be liable to you for any delay or failure to perform any obligation under the Terms if the delay or failure is due to circumstances beyond our reasonable control.

**18. MISCELLANEOUS**

These Terms, and any other terms relating to Experiences presented on GroupMe's website, application or on your Voucher, constitute the entire agreement between GroupMe and you concerning the subject matter hereof, and may only be modified by a written amendment signed by an authorized executive of GroupMe, or by the posting by GroupMe of a revised version. You agree that any notice, agreements, disclosure, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing or otherwise be authorized. There are no third party beneficiaries to the Terms. Our failure to act in a particular circumstance does not waive our ability to act with respect to that circumstance or similar circumstances. If any provision of the Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms remain in full force and effect.

**19. DISPUTE RESOLUTION****A. CHOICE OF FORUM AND LAW**

Except to the extent applicable law, if any, provides otherwise, and except as set forth below under the Arbitration and Class Action Waiver provision, all disputes arising out of or in any way related to this Agreement or the Service shall be brought exclusively in state or federal court in New York County, New York. This Agreement, and all access to or use of the Service, shall be governed by New York law.

**B. ARBITRATION AND CLASS ACTION WAIVER: IMPORTANT PLEASE READ CAREFULLY****C. GENERAL:**

You agree that, unless prohibited by applicable law, the parties to the Terms may elect to arbitrate - and require the other party to arbitrate - any claim arising out of or in any way related to this Agreement or the Service.

**D. IMPORTANT NOTICE AND LIMITATIONS:**

If you or we elect to arbitrate a claim, neither you nor we will have the right to: (1) have a court or a jury decide the claim; (2) participate in a class action in court or in arbitration, either as a class representative or a class member; (3) act as a private attorney general in court or in arbitration; or (4) join or consolidate your claim(s) with claims of any other person or involving any other transaction.

**E. STARTING AN ARBITRATION:**

To start an arbitration, you or we must give written notice of an election to arbitrate. This notice may be given after a lawsuit has been filed and may be given in papers or motions in the lawsuit. If such a notice is given, the claim shall be resolved by arbitration under this Arbitration Provision and the consumer or other applicable rules of the American Arbitration Administration then in effect using a single arbitrator appointed by the American Arbitration Association and approved by you and us. For more information please see [www.adr.org](http://www.adr.org).

**F. NO CLASS ACTIONS:**

Notwithstanding any language herein to the contrary, if you or we elect to arbitrate a claim, neither you nor we will have the right to: (1) participate in a class action in court or in arbitration, either as a class representative, class member or class opponent; (2) act as a private attorney general in court or in arbitration; or (3) join or consolidate your Claims with claims of any other person or involving any other transaction, and the arbitrator shall have no authority to conduct any such class, private attorney general or multiple-party proceeding.

#### G. LOCATION AND COSTS:

Any arbitration hearing that you attend will take place in a location that is reasonably convenient for you. If you cannot afford or otherwise do not want to pay the Administrator's or arbitrator's filing, administrative, hearing and/or other fees and cannot obtain a waiver of fees from the Administrator, we will consider in good faith any request by you for us to bear the cost of those fees. We will pay for our own attorneys, experts and witnesses and will pay the reasonable fees and charges of your attorneys, experts and witnesses if you win the arbitration, as determined by the arbitrator. We will pay any administration fee, arbitration fees and fees and charges of attorneys, experts and witnesses if and to the extent we are required to pay such fees and charges by law or in order to make this Arbitration Provision enforceable.

#### H. EFFECT OF ARBITRATION AWARD:

Any court with jurisdiction may enter judgment upon the arbitrator's award. The arbitrator's award will be final and binding, except for: (1) any appeal right under the Federal Arbitration Act, 9 U.S.C. §§1 et seq. (the "FAA"); and (2) claims involving more than \$100,000. For claims involving more than \$100,000, any party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider anew any aspect of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. The costs of any appeal will be borne in accordance with the paragraph above captioned "Location And Costs."

#### I. GOVERNING LAW:

This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA, and not by any state law concerning arbitration.

#### J. SURVIVAL, SEVERABILITY, PRIMACY:

This Arbitration Provision shall survive the termination of your use of the Services, the Terms themselves and, the fulfillment of all our and your obligations under the Terms\*

Updated May, 2012.

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GroupMe Experiences

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<https://groupme.com/terms>

By using GroupMe you are indicating that you have read, understood, and agree to the updated Terms of Service.